

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

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| James M. Garrett Petitioner-Appellant, v. Davis County Board of Review, Respondent-Appellee. | ORDER Docket No. 09-26-0040 Parcel No. 001+06034980 Docket No. 09-26-0041 Parcel No. 002+09052090 Docket No. 09-26-0042 Parcel No. 002+09057800 Docket No. 09-26-0043 Parcel No. 002+09052100 |
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On September 21, 2009, the above captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.47A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant, James M. Garrett, was self-represented and requested the appeal proceed without a hearing. The Davis County Board of Review designated County Attorney, Rick Lynch, as its legal representation. Both parties submitted evidence in support of their positions. The Appeal Board having reviewed the entire record, and being fully advised, finds:

Findings of Fact

James M. Garrett, owner of four contiguous and residentially classified parcels located in Lick Creek Township, Davis County, Iowa, appeals from the Davis County Board of Review regarding his 2009 property assessment. The four parcels total 49.58 acres and are unimproved, with the exception of two small sheds that have a nominal value (assessed at \$870).

The individual parcels, assessments, and the relief sought by Garrett are as follows:

Figure 1

| Docket # | Parcel # | Site Size (Acres) | Improvements | Assessed Value | Relief Sought |
|-----------------|-----------------|--------------------------|---------------------|-----------------------|----------------------|
| 09-26-0040 | 001+06034980 | 16.32 | No | \$20,400 | \$12,010 |
| 09-26-0041 | 002+09052090 | 18.98 | Yes | \$51,040 | \$43,995 |
| 09-26-0042 | 002+09057800 | 0.42 | No | \$1,520 | \$1,293 |
| 09-26-0043 | 002+09052100 | 13.86 | No | \$26,340 | \$20,704 |
| Total | | 49.58 | | \$99,300 | \$78,002 |

Before the Board of Review, Garrett claimed in three of the four appeals that the assessments are not equitable under Iowa Code section 441.37(1)(a) and that the property is assessed for more than the value authorized by law under section 441.37(1)(b). Garrett's protest on parcel 002+09057800, however, appeared to be solely on the ground of being assessed for more than the value authorized by law; but he did note in his written statement to the Board of Review that he considered this parcel as part of the larger farm unit and parcel 002+09052090 in particular. Thus, we find that although he did not mark the ground on the petition, he was, in fact, arguing inequity on this parcel as well. Garrett did not request hearings at the Board of Review.

The Board of Review left the value unchanged, citing "insufficient evidence presented to prove assessment is excessive."

Garrett then appealed to this board, reasserting his claim that the assessments are not equitable and that the properties are assessed for more than the value authorized by law. Additionally, Garrett plainly states to this Board that his "assessment classification [is] incorrect" and requests a re-classification to agriculture under Iowa Code 441.21(1)(e).

After careful consideration, we do not consider the ground of misclassification a new ground to this Board. Garrett used all agricultural properties for comparison on his local petition; and the Board of Review minutes indicate the protest argument was based upon classification when it considered rental rate surveys and Schedule F documentation. Additionally, in its response to the appeal filed

before this Board, the Board of Review addressed the issue of classification and did not deny it was an eligible ground of appeal, further demonstrating that the classification of the property was considered initially. While Garrett marked the grounds of inequity and over-assessed on the protest and appeal forms, it is clear that his intent was to challenge the classification of all four parcels, and the Board of Review considered this claim. For this reason, we will consider only the ground of misclassification under Iowa Code section 441.37(1)(c), which encompasses the claims that the property is inequitably assessed and assessed for more than authorized by law.

Garrett has owned the four parcels since 2002 when he purchased the property in the settlement of his father's estate. Garrett asserts that prior to this transaction and after it, the land has been actively farmed. The Board of Review agrees that it has been actively farmed; but it asserts Garrett does not farm the land.

After the 2002 transaction, the Board of Review claims there has been a lack of agricultural activity. The Board of Review submitted a response to Garrett's classification claim stating that "after monitoring the property, the classification was changed the next assessment cycle (2005), to rural residential because of the lack of agricultural activity." The Board of Review later contradicts this assertion. The Board of Review's response goes on to admit that the parcels are indeed actively farmed for profit, as of the date of the assessment, as they are rented and used as pasture for cattle by an adjacent landowner. In fact, the evidence shows John Pisarik, owner of the adjacent farm, cash-rents Garrett's property, uses it as pastureland, and operates it in conjunction with his own agricultural real estate for raising cattle (currently a 40 cattle herd). An unsigned note, allegedly from Pisarik, states that he has rented the farm ground for the past two years, and prior to his tenancy, Floyd Hale used the land as pasture for his cattle. Garrett asserts that the rent is \$1250 for the current year, and the rent will increase as he completes fencing and improves the pasture. He notes, however, that after taxes and with no other expenses, his profit will likely be minuscule.

While the Board of Review concedes the parcels are indeed actively farmed for profit, it believes that because Garrett, as the landowner, “has no at-risk investment into agriculture by income generated from this property,” the property is not properly classified agricultural. Essentially, the Board of Review’s position is that since Garrett is not personally, actively engaged in the actual agricultural activity, the property cannot be classified agricultural. The Board of Review further states, “his income is passive and expenses are maintenance based...rather than direct costs associated with production.” It emphasizes that “the renter is actively engaged in farming with the intent for profit and carries sole responsibility for the at-risk investment.”

We reject this argument. By the Board of Review’s own admission, the subject parcels are actively used for agricultural activity with the intent to profit. Iowa Administrative Code rule 71.1(3) states in part:

Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest of fruit trees, the rearing, feeding and management of livestock or horticulture, all for intended profit.

The Code does not state that the agricultural activity must be performed directly by the owner. Rather, the rule requires the *land* must be used for agricultural activity with the intent to profit. In this case, the land is being used by the tenant as pasture for cattle and in conjunction with his own farming operation.

The Board of Review also contends that because Garrett does not live on, or in close proximity to, the parcels that he cannot be considered as participating in the business of agriculture. This Board is unaware of any provision of law that requires an owner to maintain a specific proximity to a property that carries agricultural classification. We find that the Board of Review, rather than focusing on the land and its primary use, instead focuses on what the owner of the land is “engaged” in. This is evidenced by their response submitted for consideration where they plainly state, “the owner lives 120

miles west of the 50 acres owned in Davis County” and the “vehicle deductions indicate very little presence on the property...”

These comments, along with the their summary titled “Office Procedure Ag Classification” which is based primarily on tax instruction and IRS guidelines, generally speak to an entity (individual) versus the property (land). The question in this case is whether the land is “used primarily for agricultural purposes” and it *is* used for agricultural purposes “if its principal use is devoted to . . . the rearing, feeding and management of livestock . . . all for intended profit.” It also includes pastureland if held or operated in conjunction with agricultural real estate.

We find that all four parcels are acting as one unit for agricultural activity and this use has not changed over the years simply because ownership has transferred or because the owner is not physically proximate to the land. Additionally, it is noted again, that the Board of Review acknowledges both agricultural activity and profit from that activity are occurring on the subject parcels.

Based upon the foregoing, the Appeal Board finds the correct classification of all four parcels is agricultural and they shall be assessed accordingly.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or

additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

Garrett's main claim is that the property is misclassified and that its actual classification should be agricultural. The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code Ch. 701-71.1. Classifications are based on the best judgment of the assessor following the guidelines set out in the rule. *Id.* Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. *Id.* r. 701-71.1(2). "Under administrative regulations adopted by the . . . Department . . . the determination of whether a particular property is 'agricultural' or [residential] is to be decided on the basis of its primary use." *Svede v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). There can be only one classification per property. Iowa Admin. r. 701-71.1(1).

"Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes" except buildings which are primarily used or intended for human habitation. *Id.* r. 701-71.1(3). "Land . . . shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit." *Id.* With respect to residential real estate, these regulations provide that this includes land and buildings primarily used or intended for human habitation, including those buildings located on agricultural land. *Id.* r. 701-71.1(4).

The Davis County Board of Review claims that Garrett's property cannot be considered agricultural land because it is not part of a larger farming operation. To support this claim it references the administrative rule which states, in part:

Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as define in this subrule. r. 701-71.1(3).

However, as we previously noted, John Pisarik, owner of the adjacent farm rents the pastureland and operates it in conjunction with his agricultural real estate and rearing and raising cattle. There is no rule which requires the owner to be personally actively involved in the farming operation, only that the real estate in question be held or operated in conjunction with agricultural real estate. The Garrett parcels meet this test. Statutes, case law and administrative rules direct attention to present primary use as the basis for the property classification regardless of its ownership. *See Dull v. County Bd. of Review*, 150 N.W. 2d 91, 97 (Iowa 1967) (holding it improper for an assessor to consider the property owner's occupation in assessment valuation).

The evidence supports the claim that the property is misclassified. We therefore order the assessments of James Garrett's four parcels be reclassified as agriculture and valued accordingly.

The Davis County Assessor has supplied the following 2009 values for the subject parcels as agriculturally classified:

| Docket # | Parcel # | 2009 Ag Value per Acre |
|------------|----------|------------------------|
| 09-26-0040 | 06034980 | \$550 |
| 09-26-0041 | 06052090 | \$300 |
| 09-26-0042 | 09057800 | \$-0- |
| 09-26-0043 | 09052100 | \$320 |

Parcel 09057800 is a .42 acre site which is considered by Mr. Garrett as part of the larger farm unit and parcel 09052090 in particular. There is no explanation provided by the assessor identifying why this parcel would have a \$-0- value assigned. Because it is considered as part of the larger

farming unit by Mr. Garrett, it is assigned the same value per acre as parcel 09052090 for purposes of this order.


THE APPEAL BOARD ORDERS the assessment of James Garrett's four parcels located in Lick Creek Township, Davis County, Iowa be reclassified as agriculture and valued as follows:

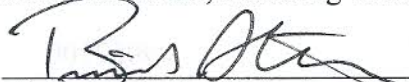
| Docket # | Parcel # | Acres | 2009 Ag Value per Acre | 2009 Ag Value |
|------------|----------|-------|---------------------------|---|
| 09-26-0040 | 6034980 | 16.32 | \$550 | \$8976 |
| 09-26-0041 | 6052090 | 18.98 | \$300 | \$6564 (= \$5694 land value + \$870 ag building) |
| 09-26-0042 | 9057800 | 0.42 | \$300 | \$126 |
| 09-26-0043 | 9052100 | 13.86 | \$320 | \$4435 |

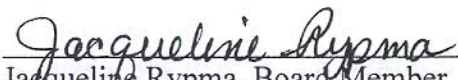
All values presented for the parcels represent the total value for that parcel, as of January 1, 2009. With the exception of parcel 6052090, all total values are represented entirely in land value. The total value of \$6565 for parcel 6052090 represents \$5694 in land value and \$870 in ag buildings.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Davis County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 21 day of January, 2010.


Karen Oberman, Presiding Officer


Richard Stradley, Board Member


Jacqueline Rypma, Board Member

Cc:

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| Certificate of Service | |
| The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>1-21</u> , 2010 | |
| By: | <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX |
| | <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier |
| | <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other |
| Signature | <u><i>James Garrett</i></u> |

